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No. 1016

In the Supreme Court of the United States

October Term, 1957

BENJAMIN J. RUDIN, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

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OPINION BELOW

The opinion of the Court of Appeals (Pet. 6) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals (Pet. 6) was entered on April 19, 1958. On May 19, 1958, Mr. Justice Burton granted an extension of time within which to file a petition for a writ of certiorari to June 18, 1958. The petition for a writ of cer-

tiorari was filed on May 21, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the statute of limitations for concealing assets of a bankrupt corporation, fixed by statute to run from discharge or denial thereof, started to run earlier from the appointment of the trustee because the corporation never applied for discharge.

STATUTES INVOLVED

11 U.S.C. 32(a):

> (a) The adjudication of any person, except a corporation, shall operate as an application for a discharge: *Provided*, That the bankrupt may, before the hearing on such application, waive by writing, filed with the Court, his right to a discharge. A corporation may, within six months after its adjudication, file an application for a discharge in the Court in which the proceedings are pending.

18 U.S.C. 3282:

> Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within three years next after such offense shall have been committed.

18 U.S.C. 3284:

> The concealment of assets of a bankrupt or other debtor shall be deemed to be a continuing offense until the debtor shall have been final-

ly discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge.

STATEMENT

Petitioner was convicted in the United States District Court for the Eastern District of Michigan for fraudulently concealing from the trustee in bankruptcy of the Detroit Central Wholesale Grocery Company certain cash and merchandise inventory belonging to the estate of the bankrupt, in violation of 18 U.S.C. 151 (R. 53a). He was sentenced to six months imprisonment (R. 53). On appeal, the conviction was affirmed (Pet. 14). The Detroit Central Wholesale Grocery Company, of which petitioner was president, was adjudicated a bankrupt on January 27, 1950 (R. 3a). The trustee was appointed on March 1, 1950, and qualified on March 4, 1950 (R. 3a). On March 10, 1953, the indictment in this case was returned against petitioner charging him with having concealed assets of the bankrupt from the trustee on March 16, 1950 (R. 3a).

Before trial, petitioner made a motion to dismiss the indictment alleging that it was not returned within the three year statute of limitations (18 U.S.C. 3282) (R. 4a). Petitioner contended that the statute of limitations commenced to run when the trustee qualified on March 4, 1950, at which time the assets were concealed from him, and that the indictment, having been returned on March 10, 1953, was beyond the three-year period (R. 4a-9a). The

trial court denied the motion and on appeal that action was affirmed (R. 8a; Pet. App. 14). The Court of Appeals pointed out that under 18 U.S.C. 3284 the period of limitations does not commence until final discharge or a denial thereof, and that a corporation may file an application for discharge within six months after adjudication. Although the corporation in the instant case never filed such an application (Gov. App. 2), the court considered that the period of limitations began to run at the end of the six-month period (July 27, 1950). The indictment, returned March 1953, was therefore returned in time (Gov. App. 2).

ARGUMENT

18 U.S.C. 3284 states in explicit terms that the statute of limitations for the crime of concealing assets of a bankrupt shall not begin to run until "final discharge or denial of discharge", and 11 U.S.C. 32(a) sets a limit of 6 months (after adjudication) within which a corporation may file an application for a discharge. Petitioner argues, nevertheless, that in this case the statute should have been deemed to have commenced running earlier at the date of the appointment of the trustee because in this case the corporation did not file an application for a discharge.

Petitioner's argument defeats itself by its mere statement. Obviously the failure of the corporation (of which petitioner was president) to apply for a discharge could not have the effect of making the period of limitations shorter than it would

have been if the corporation had applied for a discharge. The reasonable interpretation of the statute is that adopted by the court below, that the period of limitations commences to run at the end of the six-month period when the corporation could have applied for a discharge. See *United States* v. *Zisblatt Furniture Co.*, 78 F. Supp. 9 (S.D. N.Y.), where the bankrupt corporation failed to file an application for discharge within the statutory time limit of 6 months, and the court held that this was equivalent to the denial of a discharge so that the statute of limitations would commence to run at the expiration of the 6-month period.

In the instant case, the Detroit Central Wholesale Grocery Company was adjudicated a bankrupt on January 27, 1950. Under 11 U.S.C. 32(a), the company then had until July 27, 1950, within which to file an application for a discharge. No application was filed. Thus, the three-year statute of limitations applicable to the concealment of the bankrupts' assets began to run on July 27, 1950. Since the indictment against petitioner was brought on March 10, 1953, it was well within the period of limitations.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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